

June 15, 2000

### What the Numbers Tell Us

## Crimes and Hate Crimes

The Senate may soon be voting again on a hate-crimes bill. If the past is prologue, many of the claims made for that bill simply will not be true. It might be helpful, therefore, to review what we know about hate crimes and all crimes.

The statistics used herein are from the Federal Government's most recent publications, the *Uniform Crime Reports, 1998* (also known as *Crime in the United States*) and *Hate Crimes Statistics, 1998*, a compilation of data on crimes that "manifest evidence of prejudice based on" race, religion, sexual orientation, ethnicity, or disability. Here is a snapshot of the data:

**XAn American is three times more likely to be killed by lightning than to be murdered in a hate crime. Babysitters kill more persons than do government-identified haters.**

**XAn American is 1,250 times more likely to be the victim of a violent crime motivated by God-knows-what wicked reason than to be the victim of a government-defined hate crime.**

**XThe government's hate-crime numbers are padded. The great majority of hate crimes are crimes of such comparatively little consequence that they are *not even counted* in the Federal Government's standard crime reports.**

**XContrary to persistent claims, hate crimes are *not* uniquely vicious or destructive, whether to individuals or to communities. We can see that from the numbers. We also know of other crimes: Neither the Oklahoma City bombing nor the Columbine High School massacre (to name but two of the nation's recent tragedies) was a government-certified hate crime because the killers in those two cases were motivated by the old-fashioned kind of hatred.**

Of course, hate crimes are said to be so destructive to the fabric of society that special attention must be given to them even if they are few in number. That is a legitimate argument, but it is difficult to defend that argument against the vast bulk of the accumulated evidence. Nevertheless, that argument is considered below, together with the facts about hate crimes and all other crimes.

## I. Hate-Crimes Laws Are Necessarily Discriminatory

Before turning to the numbers, it may be useful to remember that hate-crimes laws are intentionally discriminatory. They discriminate against nearly everyone who is a victim of a crime, and they *cannot* be made nondiscriminatory. They get their power from including certain characteristics (such as race and sexual orientation) and excluding certain other characteristics. No crime, no matter how vicious and hate-filled, is counted as a "hate crime" if the victim was attacked because of her old-age or youth or job or divorce or poor health or neighborhood or economic circumstances. One important book by Professor James Jacobs (of the NYU School of Law) and Attorney Kimberly Potter describes hate-crimes laws this way:

"Hate crime laws are based on the belief that all crime is not created equal; rather, crimes motivated by certain prejudices are worse than crimes similar in every respect other than motivation. Not surprisingly, that assumption is likely to be controversial. Many will argue that all perpetrators of serious crime are equally deserving of condemnation and all victims equally deserving of sympathy.

"It might be tempting to conclude that jealousies and resentments over exclusions from the hate crime laws can be avoided by drafting these laws to include all salient prejudices. While that would solve the problem of disparaging some groups' victimizations in comparison to others', it would also negate the primary purpose of the hate crime laws: to specially condemn offenders with certain prejudices and specially recognize their victims. Hate crime laws only make sense if certain bigoted offenders are condemned more forcefully and punished more severely than offenders who commit the same crime but for nonprejudiced reasons. It is the *exclusion* that gives these laws their symbolic power and meaning." J. Jacobs & K. Potter, *HATE CRIMES: CRIMINAL LAW & IDENTITY POLITICS* 132-33 (Oxford University Press, 1998) (emphasis in original).

We turn now to the data. The facts are relatively simple, but the ratios are startling.

According to the Department of Justice, there were "7,755 bias-motivated criminal incidents" in 1998, and those incidents encompassed 9,235 separate criminal offenses. *Hate Crimes Statistics, 1998*, at 5 & Table 1. Of the 9,235 criminal offenses reported in *Hate Crimes Statistics, 1998*, there were 6,305 of what the report calls "crimes against persons" and 2,905 of what the report calls "crimes against property" (and 25 "crimes against society"). *Id.* at Table 3.

In the abstract, 9,235 crimes is a lot of crimes. In context, however, 9,235 crimes is a sliver of the total problem. There are millions of crimes every year in the United States. To focus on hate crimes is to ignore the forest for a seedling.

## II. Hate Crimes Are a Minuscule Threat Even After The Numbers Are Inflated

- In 1998, there were 16,914 murders committed in the United States, and 13 of those were hate crimes. During the same 12 months, according to the U.S. National Oceanic and Atmospheric Administration, 44 persons were killed by lightning.
- More than 750 young children were murdered in 1998. When population is taken into account, murder is more than 300 times more deadly for America's kids than hate crimes are for all Americans.<sup>1</sup>
- Babysitters are 77 percent more murderous than government-defined "haters". In 1998, 23 children were murdered by their babysitters. *Uniform Crime Report*, Table 2.13.
- In 1998, there was an average of 46 murders committed in the United States *every day*. About *once every 30 days* one of these murders was determined to have been motivated by that special kind of hatred that qualifies it as a hate crime. Other motivations, no matter how depraved, and other sorts of hatred, no matter how malevolent, are not selected for special reporting.
- An American is about 1,250 times more likely to be the victim of a violent crime motivated by God-knows-what wicked reason than to be the victim of a hate crime. For property crimes, the ratio is more than 47,300 to one! These numbers are shown in detail in the Tables below.
- Hate-crime statistics are padded: More than 80 percent of what the government counts as hate crimes against persons, and more than 90 percent of what the government counts as hate crimes against property, are crimes of such comparatively little consequence that they *are not even counted* among the crimes in the *Uniform Crime Reports*. These numbers, too, are shown in detail in the Tables below.
- For every 20,000 murders in 1998, 15 were hate crimes (0.077 percent). For every 20,000 forcible rapes in 1998, 2 were hate crimes (0.012 percent). For every 20,000 robberies in 1998, 5 were hate crimes (0.026 percent). For every 20,000 aggravated assaults in 1998, 22 were hate crimes (0.111 percent).
- About 25,000 parents had sons murdered, and about 8,500 parents had daughters murdered in 1998.<sup>2</sup> About 25 of those parents lost their children to hate crimes.
- **In sum, hate-crimes laws do not cover, literally, 99.99% of all victims of crime.**

There is, of course, a vast moral difference between deaths caused by lightning and deaths caused by homicide. The reference to the number of deaths caused by lightning is intended only to convey some sense of proportionality with respect to the number of deaths attributed to hate crimes, and their frequency. The reference to the 16,900 *other* murders which were not motivated by government-defined hatred, and the references to the ratios of hate crimes to all other violent crimes and property crimes, are intended to give some sense of moral proportionality.

The facts shown on the preceding page seem vastly out of whack with our common perceptions of hate crimes — and with the political drumbeat for more laws against hate crimes.

### **III. There Are 1,250 Violent Crimes Motivated By Lust or Greed or Anger or Old-Fashioned Hatred For Every One Hate Crime**

Hate crimes are so rare that they are statistically insignificant — and they are statistically insignificant even when the number of hate crimes is padded, which (as we shall see) it is. Of course, hate crimes (and *all* crimes) can be tragic, but that is no reason to distort the facts and the threat.

The Federal Government defines a violent crime as a murder, a forcible rape, a robbery, or an aggravated assault. As shown in the following Tables, an American is about 1,250 times more likely to be the victim of a violent crime caused by all other causes than he is to be the victim of a violent crime caused by government-defined “hate”. Where is the outrage for those hundreds of thousands of victims?

**Table 1.  
Number of Crimes Against Persons, 1998<sup>3</sup>**

	All Offenses	Hate Crimes Offenses
Murder <sup>4</sup>	16,910	13
Forcible rape <sup>5</sup>	93,100	11
Robbery <sup>6</sup>	446,630	118
Aggravated Assault	974,400	1,084
Simple Assault	not counted	1,706
Intimidation	not counted	3,488

Table 1 shows raw numbers. Table 2 shows the threat when the raw numbers are correlated to the population of the United States (estimated at 270,296,000 in 1998).

**Table 2.**  
**Rate of Crimes Against Persons, 1998<sup>7</sup>**  
(rate per 100,000 inhabitants)

	All Offenses	Hate Crimes Offenses	Ratio
Murder	6.3	0.0048	1313 : 1
Forcible rape	34.4	0.0041	8390 : 1
Robbery	165.2	0.0437	3780 : 1
Aggravated Assault	360.5	0.4010	899 : 1
Simple Assault	not counted	0.6312	-----
Intimidation	not counted	1.2904	-----

As Table 2 shows, for every 100,000 Americans there were 6.3 murders, a rate that is *more than 1300 times larger* than the rate for hate-crime murders. For aggravated assault, the ratio is nearly 900 to one.

When the number of hate crimes is subtracted from the number of total crimes so that we can compare hate crimes with all other ("nonhate") crimes, we find that an American is 1,249 times more likely to be the victim of a violent crime motivated by all *other* causes than he is to be the victim of a violent hate-crime.

#### IV. The Hate-Crimes Numbers Are "Padded"

The *Uniform Crime Reports* counts "violent crimes" while *Hate Crimes Statistics* counts something quite different, "crimes against persons". The two terms encompass fundamentally different criminal behaviors.

In Table 2, no ratio can be calculated for "simple assault"<sup>8</sup> and "intimidation"<sup>9</sup> because *Uniform Crime Reports* simply does not count those crimes. Therefore, a large majority of the crimes that constitute hate crimes against persons *are not even counted* among the criminal offenses that appear in the *Uniform Crime Reports*, the official publication of the Federal Government that documents major crime in America.

By adding simple assault and intimidation to the definition of hate crimes against persons, the number of reported hate crimes is vastly inflated as compared to all other reported crimes. Table 3 shows the numbers in greater detail:

**Table 3.**  
**Hate Crimes Against Persons, 1998<sup>10</sup>**

	Number of Offenses	Number Subtotals	Percent of Total Offenses	Percent Subtotals
Murder	13		0.2	
Forcible rape	11		0.2	
Aggravated Assault	1,084		16.9	
Robbery	118		1.8	
		1,226		19.1
Simple Assault	1,706		26.6	
Intimidation	3,488		54.3	
Other	3		<0.1	
		5,197		80.9
Totals	6,423		100.0	

As can be seen, 80.9 percent of all hate crimes against persons simply do not appear in the Department of Justice's general collection of crimes. "Simple assault" and "intimidation" are crimes, but they are of such relatively minor significance that the Department does not even collect the data in other contexts.

The hate-crime statistics are inflated. They throw in 80 percent apples with their 20 percent oranges, but *Uniform Crime Reports* counts oranges only.

### **V. For Every One Property Crime Motivated by Government-Defined Hate, There Are Tens of Thousands of Other Property Crimes**

The same conceptual and definitional problems afflict crimes involving property. The *Uniform Crime Reports* counts "property crime" (burglary, larceny-theft, motor vehicle theft, and arson) while *Hate Crime Statistics* counts "crimes against property". They are not the same.

We already have noted the curiosity of *Hate Crimes Statistics* counting "robbery" as a crime against property, see endnote 6, but the vital fact is that *Hate Crimes Statistics* counts "destruction / damage / vandalism" in its crime numbers but the *Uniform Crime Reports* does not. Once again, therefore, *Hate Crimes Statistics* vastly skews the data.

More than 91 percent of all "crimes against property" that are reported in *Hate Crimes Statistics* are "destruction / damage / vandalism", a category that simply cannot be found in the

*Uniform Crime Reports.* Such crimes do not appear because they are so relatively minor and so numerous. The facts are shown in Table 4.

**Table 4.**  
**Crimes Against Property, 1998<sup>11</sup>**

	Number of All Offenses	Number of Hate Crimes Offenses	Hate Crimes As a Percent of Total
Burglary	2,330,000	99	0.0042
Larceny-theft	7,373,900	81	0.0011
Motor vehicle theft	1,240,800	3	0.0002
Arson	78,094	50	0.0640
Destruction/damage/vandalism <sup>12</sup>	not counted	2,549	-----
Other	not counted	5	-----
Total		2,787	

When the number of hate-crimes is subtracted from the number of all property crimes (burglary, larceny-theft, motor vehicle theft, and arson) so that we can compare hate crimes with all other ("nonhate") crimes, we find that an American is 47,300 times more likely to be the victim of a property crime motivated by all other causes than he is to be the victim of a property crime motivated by government-defined hate.

## **VI. The Number of Hate Crimes Can be Manipulated by Changing the Definitions**

We have seen how hate-crimes laws are discriminatory, and intentionally so, and we have seen how hate-crimes statistics are inflated and misleading. The problem of good numbers is acute, and in the emotionally charged and politically sensitive context of hate-crimes it is fraught with dangers. Additionally, as we also have seen, the numbers depend to a large extent on the definitions. The numbers can be manipulated by playing with the definitions:

"Hate crime' is a social construct. It is a new term, which is neither familiar nor self-defining. Coined in the late 1980s to emphasize criminal conduct motivated by prejudice, it focuses on the psyche of the criminal rather than on the criminal's conduct. It attempts to extend the civil rights paradigm into the world of crime and criminal law.

"How much hate crime there is and what the appropriate response should be depends upon how hate crime is conceptualized and defined. In constructing a

definition of hate crime, choices must be made regarding the meaning of prejudice and the nature of the causal link between the offender's prejudice and criminal conduct.

"'Prejudice' is an amorphous term. If prejudice is defined narrowly, to include only certain organized hate-based ideologies, there will be very little hate crime. If prejudice is defined broadly, a high percentage of intergroup crimes will qualify as hate crimes. If only a select few crimes, such as assault or harassment, can be transformed into hate crimes, the number of hate crimes will be small. If vandalism and graffiti, when motivated by prejudice, count as hate crimes, the number of hate crimes will be enormous. If criminal conduct must be completely or predominantly caused by prejudice in order to be termed hate crime, there will be few hate crimes. If prejudice need only *in part* to have motivated the crimes, hate crime will be plentiful. In other words, we can make the hate crime problem as small or large as we desire by manipulating the definition.

"There are many different types of prejudices that might qualify for hate crime designation. Some civil rights and affirmative action legislation speaks in terms of 'protected groups,' but this does not easily apply in the hate crime context because when it comes to crime, all victims are a protected group. Why should some victims be considered more protected than others?" HATE CRIMES: CRIMINAL LAW & IDENTITY POLITICS, *supra*, at 27-28 (underlining added; italics in original).

## **VII. Hate-Crimes Statistics Distort Reality And May Increase, Not Reduce, Racial Discord**

Curiously, under the Federal Government's hate-crimes reporting system it is impossible for a Hispanic to commit a hate crime. Hispanics can have hate crimes committed *against them*, but officially they *cannot commit* hate crimes.

When listing characteristics of *offenders*, *Hate Crime Statistics* uses the following racial categories only: "White", "Black", "American Indian / Alaskan Native", "Asian / Pacific Islander", "Multiracial group", and "Unknown race". *E.g., Hate Crimes Statistics, 1998*, Table 5. White Americans can commit hate crimes. Black Americans can commit hate crimes. Asian Americans can commit hate crimes. Hispanic Americans (who, according to the *Statistical Abstract of the United States, 1999*, Table 13, comprise 11.2 percent of the population) cannot commit hate crimes, by definition of the United States Government.

When listing characteristics of *victims*, however, different categories are used, and hate-crimes *offenses* may be committed *against* Hispanics because of "Anti-Hispanic" bias. See, *e.g., Hate Crimes Statistics, 1998*, Table 5.



Hate-crimes laws are often justified by claims that they promote racial harmony. For a number of reasons (some of which are touched on in part VIII of this paper), that claim is doubtful. In fact, hate-crimes laws may have just the opposite effect. Table 5, below, shows one lesson that we can learn from *Hate Crimes Statistics*.

**Table 5.**  
**Hate-Crimes Offenses By Suspected Offender's Race, 1998<sup>13</sup>**  
(crimes against persons where race of offender is known)

	Number of Offenses	Percent of Offenses	Percent of U.S. Population
White	3,538	78.3	82.5
Black	846	18.7	12.7
American Indian / Alaskan Native	62	1.4	0.9
Asian / Pacific Islander	73	1.6	3.9

We see, therefore, by using data from the Federal Government's own *Hate Crimes Statistics* book, that persons from two minority groups are committing hate crimes in numbers well above their proportions of the population. Is this fact conducive to racial harmony?<sup>14</sup>

### **VIII. Notwithstanding the Minuscule Number of Hate Crimes, Do Hate Crimes Present a Special Problem That Requires an Extraordinary Solution?**

This paper has shown the relationship of hate crimes to all crimes, and the ratios are truly astonishing. Surely it is possible to conclude that the *number* of hate crimes is not a problem that deserves special attention. When being struck by lightning is a much greater risk to life than a hate-motivated murder, and when a person is 1,250 times more likely to be the victim of a violent crime motivated by some cause other than government-defined hatred, then it is simply not possible to say that the number of hate crimes is a special problem. Nevertheless, perhaps hate crimes are entitled to special consideration for social or moral reasons.

**Hate crimes might be a special problem requiring an extraordinary solution if they were especially brutal and frightening, but they are not.** Indeed, as we have seen, more than 80 percent of the relatively few hate crimes against persons are not even violent crimes.

Of course, some hate crimes *are* especially brutal and frightening. The murder of James Byrd, Jr., who was chained to a pickup truck and dragged to his death along a road in Jasper, Texas, is the kind of terrifying crime that makes all of us cringe, but hate crimes are not *uniquely* brutal and frightening. A few years ago, Dr. Pamela Basu was dragged to her death during a car

jacking in Howard County, Maryland. Dr. Basu's killers seem to have been motivated by mere greed, but that doesn't diminish the savagery of the crime or its effect on the community. That crime, too, made us cringe.

**Hate crimes might be a special problem requiring an extraordinary solution if they posed a special threat to society, but they do not.** It is certainly true that some hate crimes tear at our common commitments and institutions, but most don't, and those that do are not unique.

Consider the following list of crimes that are not government-defined hate crimes: the bombing of the World Trade Center which left five dead and more than 1,000 injured; the bombing of the Alfred P. Murrah Building in Oklahoma City which left 168 dead (including infants) and many others (including infants) injured; the school shooting at Columbine High School that left 12 high school students and one teacher dead and 28 wounded, and the other 20-or-so school shootings during the past five years; the attack at Westwood Baptist Church in Fort Worth which left seven dead and seven wounded; the five murders at a Tampa hotel on the eve of New Year's Day football games; the "day trader" in Atlanta who bludgeoned to death his wife and two young children and then shot another nine dead and wounded 13; and the "Railway Killer" in Texas and the Southwest who has been accused of at least seven murders in three States over several years. All of these crimes tore at the fabric of society (as do many, many others, including those that appear in this morning's newspapers — and it doesn't matter what day today is), but these crimes are not government-denominated hate crimes.

The Republican Policy Committee has looked at every one of the 13 murders in 1998 that were hate crimes, and the results were surprising. To begin with, simply finding basic information on the crimes was difficult. Some of our searches took weeks and still ended unsatisfactorily. We still have one crime in which we cannot even locate the name of the victim or the offender. Apparently, there was no news report of any kind on the murder. In another case, the local police department denies that the crime happened. Most of the crimes were never reported outside of their localities, and most press reports lasted about two days. With the exception of the James Byrd case and the Matthew Shepard case, we doubt that anyone in the Nation's Capital can name even one of the other victims who was murdered because of government-defined hatred. This being so, how can these crimes be said to "rip at the fabric of society" to such an extent that new Federal laws (of questionable constitutionality<sup>15</sup>) are required?

Each of the hate-crimes murders is a singular tragedy, it is true, but such crimes are not more terrible than other murders. Murder itself "tears at the fabric of society", but hate-crime murders are not more destructive than other murders.

**Hate crimes might be a special problem requiring an extraordinary solution if they helped heal racial divisions, but they do not. In fact, hate-crimes laws may open wounds, not close them.** There is evidence that the concept and application of hate-crimes laws will

exacerbate racial tensions. Some of the statistical data are listed above, and there are numerous illustrative cases.

In a *Wall Street Journal* article that makes several important points about hate-crimes laws, there is an account of the tension in one State because one sheriff called a terrible crime a "hate crime" (a phrase that he later regretted using because he was referring to the old-fashioned kind of hatred and not racial animus) while another sheriff didn't use that term in describing another terrible crime. One of the victims was Brad Young, a young white man allegedly attacked by three Indians, and the other victim was Robert Many Horses, a young Indian allegedly murdered by four white men. Instead of treating the two attacks as comparable and terrible, the community is divided over motives and name calling. "What's a Hate Crime? South Dakota Cases Raise the Question", *The Wall Street Journal*, Aug. 27, 1999 (story begins on p. A1). Is this the way to racial and ethnic harmony?

The *Journal* story is from America's rural heartland; it shows how the *counting* of hate crimes (*not* the crimes themselves, which everyone agrees were horrible) can divide Native Americans from white Americans. In America's richly diverse cities, too, the "racialism" inherent in hate-crimes laws can divide American from American:

"In 1992, a small group of Orthodox Jews was arrested for assaulting a homeless black man. They claimed that they restrained the man after he was found attempting to commit a burglary. The victim claimed he was looking through garbage cans for clothes. When the police determined that racial slurs were uttered during the incident, they labeled it a bias crime. Some Jewish leaders criticized Mayor David Dinkins (NYC's first black mayor) for endorsing the label, and accused him of favoring black Crown Heights residents in everything from police protection to social service contracts. Jewish leaders from Brooklyn neighborhoods such as Crown Heights, Borough Park, and Williamsburg, and from Manhattan's Lower East Side, denounced the mayor's handling of the incident as 'repugnant,' and an example of the city administration's double standard for appraising conflicts between blacks and Jews. The Jewish leaders pointed to an incident two months earlier, when a Brooklyn jury acquitted Lemerick Nelson of murder in the stabbing death of a rabbinical student during the 1990 Crown Heights riots; the mayor had not criticized the jury in that case, as he had done in several cases in which whites had been exonerated of crimes against blacks. City Council President Andrew Stein criticized the mayor for 'prematurely' labeling the present incident a bias crime. Ultimately, the victim disappeared and all charges were dropped." HATE CRIMES: CRIMINAL LAW & IDENTITY POLITICS, *supra*, at 138.

Is this the kind of confrontation that the Congress wishes to encourage, and do hate-crimes laws encourage or discourage this sort of confrontation between groups?

**Hate crimes might be a special problem requiring an extraordinary solution if the States were failing to guarantee equal justice, but they are not. Are the States failing, perhaps as a legacy of the Jim Crow era? No. Let's remember that the three murderers of James Byrd already have been found guilty of murder, and two of them have been sentenced to death. The two murderers of Matthew Shepard already have been found guilty of murder, and both have been sentenced to two life terms.**

Neither Texas nor Wyoming has a hate-crimes law, but both allow the death penalty to be imposed. Ironically, the leading hate-crimes bills (Senator Kennedy's S. 622 and H.R. 1082 in the House) seek to expand Federal jurisdiction over a redefined and enlarged set of hate crimes but do not allow for the imposition of a capital sentence when a hate crime leads to death.

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## ENDNOTES

1. The *Uniform Crime Reports, 1998*, p. 16, Table 2.5 shows there were 751 murders of children 12-years-of-age and younger. The *Statistical Abstract of the United States, 1999*, p. 16, Table No. 16 [sic] shows that there were 50,496,000 children 12-years-of-age and younger in the United States in 1998. For total U.S. population, we have used 270,296,000, the number that appears in the *Uniform Reports* p. 64, Table 1.
2. Males are murdered at about three times the rate of females, *Uniform Crime Reports, 1998*, page 16, Table 2.5.
3. Sources for Table 1: *Uniform Crime Reports, 1998*, page 64 (Table 1) (the numbers are rounded to the nearest ten) and *Hate Crime Statistics, 1998*, page 9 (Table 3).
4. The term "murder" as used in the Government publications includes the crime of nonnegligent manslaughter. It has the same meaning when used within our Tables.
5. "Forcible rape" is the carnal knowledge of a female forcibly and against her will. Statutory rape and other sex offenses are not included in the number.
6. *Hate Crimes Statistics* lists robbery as a crime against property. The *Uniform Crime Reports*, on the other hand, correctly counts robbery as a violent crime against persons. We have followed the example of the *Uniform Crime Reports*. Throughout this paper, therefore, the 6,305 "crimes against persons" that are shown in *Hate Crimes Statistics, 1998* are supplemented by adding the 118 hate-crime robbery offenses. The methodology used in this paper *increases* the number of hate crimes against persons and *decreases* the number of hate crimes against property.
7. Sources for Table 2: Column one is from *Uniform Crime Reports, 1998*, page 64 (Table 1) ("rate"). Column two is derived by applying the 1998 population to the number of hate-crimes offenses shown in Table 1, column two. Column three merely compares columns one and two. Because of rounding, the ratios in column three are different from what they would be if they had been calculated directly from the numbers in Table 1.
8. A "simple assault" is defined as an unlawful attack that does not result in serious injury and where no weapon is used. For purposes of hate-crimes counting, the definition of "simple assault" also includes attempted crimes as well as completed crimes.
9. The crime of "intimidation" is the use of threatening words or conduct to unlawfully place another person in reasonable fear of bodily harm. The crime of "intimidation" is typically committed by angry shouts and threats and waving of fists.
10. Sources for Table 3: Column one is from *Hate Crime Statistics, 1998*, page 9 (Table 3). Column three is derived from column one.

11. Sources for Table 4: Column one is from *Uniform Crime Reports, 1998*, page 64 (Table 1), except "arson" which is from page 54 (text). The actual number of arsons probably was significantly above the number shown in Table 4. This number is based on low reporting and the Department of Justice declined to use it for total arson offenses. *Id.* at 64 n. 3. Column two is from *Hate Crime Statistics, 1998*, page 9 (Table 3) which lists 2,905 "crimes against property". We have transferred the 118 robberies from "crimes against property" to "crimes against persons", see footnote to "Robbery" entry in Table 1, leaving a total of 2,787 hate crimes against property.

12. The crime of destruction / damage / vandalism is closely tied to the history of hate-crimes laws. Racial, ethnic, and religious slurs painted on a house of worship or a home have been considered especially hurtful to victims.

13. Sources for Table 5: Column one is from *Hate Crimes Statistics, 1998*, p. 13, Table 6. We have excluded 178 offenders from the "multiracial group" and 1,608 offenders whose race was unknown. Column three is from *Statistical Abstract of the United States, 1999*, p. 14, Table No. 13 (estimate for 1998). We have not shown "crimes against property" in the Table because 78 percent of those offenders are of race unknown.

14. The *Uniform Crime Reports* also says something about crime and race, although those numbers are not correlated with motive: Of the 16,914 murders in 1998, supplemental data were received on 16,019 offenders. Of that number, 5,620 were white; 5,647 were black; 289 were of other races; and 4,463 were of unknown race. *Uniform Crime Reports, 1998*, p. 16, Table 2.6. In those still fewer cases in which the race of the offender was known, the race of the victim was known, and there was a single offender and a single victim, the data show that white offenders murdered 3,205 white victims and 205 black victims, and black offenders murdered 449 white victims and 3,067 black victims. *Uniform Crime Reports, 1998*, p. 17, Table 2.8.

15. Senator Kennedy's original bill, S. 622, is of dubious constitutionality following the Supreme Court's decision in *United States v. Morrison*, 120 S. Ct. 1740, 2000 WL 574361 (decided May 15, 2000), which held unconstitutional a hate crimes-related portion of the Violence Against Women Act. If a Kennedy amendment is brought to the floor, it is expected that the original bill will be modified somewhat to address the question of constitutionality. Additionally, the bill may be renamed: Look for the "Hate Crimes Prevention Act" to reemerge as the "Local Law Enforcement Enhancement Act".